

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Johnny Baggett,  
  
Petitioner,  
  
v.  
  
State of Nevada,  
  
Defendant.

Case No.: 2:23-cv-00744-APG-MDC

**Order Denying Petitioner's  
Motion to Stay Without Prejudice,  
Granting Petitioner's Motion to Seal and  
Motion to Extend, and Granting the  
Respondents' Motion to Seal**

[ECF Nos. 22, 32, 36, 39]

Petitioner Johnny Baggett has filed a counseled first amended petition (ECF No. 20) and now requests a stay while he litigates his state postconviction petition. ECF No. 36. Also pending are Baggett's motion to seal (ECF No. 22) and motion to extend (ECF No. 39) as well as the respondents' motion to seal (ECF No. 32) and motion to dismiss (ECF No. 35).

**Background**

The state court sentenced Baggett to life without the possibility of parole for two counts of first degree murder with the use of a deadly weapon; burglary; robbery with use of a deadly weapon; two counts of assault with a deadly weapon; three counts of discharging a firearm at or into an occupied structure, vehicle, aircraft, or watercraft; three counts of discharging a weapon where a person might be endangered; and carrying a concealed firearm or other deadly weapon. The Court of Appeals affirmed the conviction.

Baggett filed a state habeas petition that was denied. The Nevada Court of Appeals affirmed the denial of relief. Baggett initiated this federal habeas corpus proceeding and following the appointment of counsel, he filed his first amended petition. ECF No. 20. The respondents move to dismiss Grounds 2 through 6 as unexhausted. ECF No. 35. In June 2024,

1 Baggett returned to state court and filed a second state habeas petition raising the same claims  
 2 that the respondents argue, and Baggett concedes, are unexhausted. Baggett’s second state  
 3 habeas petition remains pending before the state court.

## 4 Discussion

### 5 A. Motion to Stay

6 A district court is authorized to stay an unexhausted petition in “limited  
 7 circumstances,” to allow a petitioner to present unexhausted claims to the state court without  
 8 losing his right to federal habeas review due to the relevant one-year statute of  
 9 limitations. *Rhines v. Weber*, 544 U.S. 269, 273–75 (2005); *Mena v. Long*, 813 F.3d 907, 912  
 10 (9th Cir. 2016) (holding that district courts have authority to stay and hold in abeyance both  
 11 mixed petitions and “fully unexhausted petitions under the circumstances set forth  
 12 in *Rhines*”). Under the *Rhines* test, “a district court must stay a mixed petition only if: (1) the  
 13 petitioner has ‘good cause’ for his failure to exhaust his claims in state court; (2) the unexhausted  
 14 claims are potentially meritorious; and (3) there’s no indication that the petitioner intentionally  
 15 engaged in dilatory litigation tactics.” *Wooten v. Kirkland*, 540 F.3d 1019, 1023 (9th Cir.  
 16 2008) (citing *Rhines*, 544 U.S. at 278).

17 The Ninth Circuit has acknowledged that the *Rhines* “good cause” standard does not  
 18 require “extraordinary circumstances.” *Wooten*, 540 F.3d at 1024 (citing *Jackson v. Roe*, 425  
 19 F.3d 654, 661–62 (9th Cir. 2005)). But courts “must interpret whether a petitioner has ‘good  
 20 cause’ for a failure to exhaust in light of the Supreme Court’s instruction in *Rhines* that the  
 21 district court should only stay mixed petitions in ‘limited circumstances’.” *Wooten*, 540  
 22 F.3d at 1024 (citing *Jackson*, 425 F.3d at 661). Courts must also “be mindful that AEDPA aims  
 23 to encourage the finality of sentences and to encourage petitioners to exhaust their claims in state

1 court before filing in federal court.” *Wooten*, 540 F.3d at 1024 (citing *Rhines*, 544 U.S. at 276–  
2 77).

3 Baggett asserts that he can overcome all applicable procedural bars because he has newly  
4 presented evidence of actual innocence including an exculpatory fingerprint report, two  
5 witnesses describing the murder suspect as Hispanic, evidence that the murders were gang  
6 related, and evidence that ballistics matching is unreliable. ECF No. 36 at 3-4. He filed his  
7 second state habeas petition raising his unexhausted claims and newly presented evidence of  
8 actual innocence. He argues that he is required to return to state court because his actual  
9 innocence argument provides an avenue for having his claims heard in state court. ECF No. 40 at  
10 8.

11 Baggett does not demonstrate good cause to excuse his failure to present his unexhausted  
12 claims and actual innocence argument to the Nevada state courts. It appears that Baggett was  
13 represented by counsel during the post-conviction proceedings before the state court and  
14 although his motion lists the newly presented evidence, Baggett does not assert that post-  
15 conviction counsel rendered ineffective assistance for failure to develop or pursue the legal or  
16 factual basis for his unexhausted claims or to present new evidence in support of his actual  
17 innocence argument. *See Blake v. Baker*, 745 F.3d 977, 982-83 (9th Cir. 2014) (finding that  
18 ineffective assistance of postconviction counsel or a lack of postconviction counsel can  
19 constitute good cause under *Rhines*.) He does not argue that the newly presented evidence was  
20 not previously known to him or that it was not previously available. Moreover, it is not clear that  
21 a return to state court to argue actual innocence as a basis to excuse procedural default is  
22 required. For these reasons, Baggett’s showing of good cause is inadequate to support a *Rhines*  
23 stay. Accordingly, I deny Baggett’s motion to stay the petition without prejudice. Baggett has

1 30 days to renew his motion to stay. If he chooses not to file a renewed motion to stay, he must  
2 file his opposition to the respondents' motion to dismiss within 45 days of entry of this order.

3 **B. Motions to Seal**

4 Baggett seeks leave to file under seal (ECF No. 22): Exhibit 21, Petitioner's Presentence  
5 Investigation Report ("PSI") (ECF No. 23), dated May 3, 2018. Under Nevada law, the PSI is  
6 "confidential and must not be made a part of any public record." Nev. Rev. Stat. § 176.156(5).  
7 In addition, the respondents seek leave to file under seal (ECF No. 32): Exhibit 77, Supplement  
8 to Baggett's Sentencing Memorandum (ECF No. 33-1). Exhibit 77 contains confidential  
9 information including medical records and school records.

10 Having reviewed and considered the matter in accordance with *Kamakana v. City and*  
11 *County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), and its progeny, I find that a compelling  
12 need to protect the petitioner's safety, privacy, and/or personal identifying information  
13 outweighs the public interest in open access to court records. Accordingly, Baggett and the  
14 respondents' motions to seal are granted, and Exhibits 21 and 77 are considered properly filed  
15 under seal.

16 **C. Motion to Extend**

17 Baggett seeks an extension of time to file his reply in support of his motion to stay. ECF  
18 No. 39. I find that the request is made in good faith and not solely for the purpose of delay, and  
19 therefore, good cause exists to grant Baggett's motion.

20 **Conclusion**

21 I THEREFORE ORDER:

22 1. Petitioner Johnny Baggett's Motion to Stay (ECF No. 36) is denied without prejudice.

23 Baggett has 30 days to renew his motion to stay. If he chooses not to file a renewed

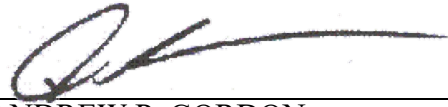
1 motion to stay, he must file his opposition to the respondents' motion to dismiss  
2 within 45 days of entry of this order.

3 2. Baggett's Motion to Seal (ECF No. 22) is granted. Exhibit 21 is considered properly  
4 filed under seal.

5 3. The respondents' Motion to Seal (ECF No. 32) is granted. Exhibit 77 is considered  
6 properly filed under seal.

7 4. Baggett's unopposed first Motion to Extend (ECF No. 39) is granted *nunc pro tunc*.

8 DATED this 18th day of October, 2024.

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11 ANDREW P. GORDON  
12 UNITED STATES DISTRICT JUDGE  
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